IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Bail Appl..No. 6269 of 2007()

CRIME NO.254/07 OF KATTAPPANA POLICE STATION.

PETITIONERS

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1. SAJI KURIAN,
   MENDAPATTIL HOUSE, THOPPIPALA P.O.,
   MURICKATTUKADU, KATTAPPANA,
   IDUKKI DISTRICT.

2. RAJAPPAN @ VAVA, S/O.KUNJU,
   VATTUKALATHIL HOUSE, THOPPIPALA P.O.,
   SWARAJ, KATTAPPANA, IDUKKI DISTRICT.

3. SUNNY JOSEPH @ BEENA SUNNY,
   NELLIKUNNEL HOUSE, THOPPIPALA P.O.,
   MARIKATTUKADU, IDUKKI DISTRICT.

BY ADV. SRI.A.C.DEVASIA
SRI.T.J.MICHAEL

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6269 OF 2007

Dated this the 19th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations for offences punishable under Sec.436 read with Sec.34 of the IPC. Consequently, there is an allegation that the petitioners have committed the offence punishable under Sec.3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The crux of the allegations against the petitioners is that the petitioners, in furtherance of their common intention, have committed mischief by setting fire to the residential building of the de facto complainant.

2. The alleged incident occurred on 14/5/07. The crime has been registered on 15/5/07. Investigation is in progress. The petitioners apprehend imminent arrest. The F.I.R. was

registered on the basis of a statement given by the de facto complainant. Seven accused persons were originally arrayed as accused. Allegations were raised of offences punishable under Secs.447, 427, 294, 436 read with Sec.34 of the IPC. Altogether 7 persons were arrayed as accused. In the course of investigation, police have come to the conclusion that the petitioners herein alone need continue on the array of accused. All other offences have been deleted and now investigation is continuing only for the offences punishable under Sec.436 of the IPC and Sec.3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Sec.34 of the IPC.

3. The learned counsel for the petitioners submits that the allegations are inherently improbable and artificial. There is convincing materials to show that no offence under Sec.436 of the IPC will at all be revealed. The learned counsel relies on the scene mahazar prepared. The Case Diary has been made available for my perusal. I have perused the Case Diary. The learned Public Prosecutor has shown to this Court the photographs taken of the building after the occurrence also.

4. On the materials available, the conclusion appears to be inevitable, at the moment and with the available materials, that the allegation under Sec.436 of the IPC cannot be said to be reasonable or justified. I am satisfied that the petitioners are entitled for anticipatory bail for the offence punishable under

Sec.436 of the IPC.

5. In view of the bar under Sec.18 of the of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, anticipatory bail for the offences punishable under Sec.3(2)(v) cannot be granted. But the learned counsel for the petitioners, according to me, is absolutely correct in coming to the conclusion that the allegations do not constitute any offence under Sec.3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The mere fact that such a section has been shown in the F.I.R. would not attract the bar under Sec.18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. I have already expressed the view that the allegations do not at all constitute the offence under Sec.436 of the IPC as no mischief by fire to a dwelling house is seen committed at all. Consequently, I am satisfied that notwithstanding Sec.18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act the petitioners herein can be granted anticipatory bail. If not under Sec.438 of the IPC, I am satisfied that under Sec.482 of the such directions deserve to be issued in the interests of justice.

6. In the result, this petition is allowed. Following directions are issued:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 26/10/07. They

shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 26/10/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 26/10/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 26/10/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge